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FEB 03 2003

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

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BRENT TAYLOR

22001 Bluegrass Road
Ottumwa, Iowa 52501

PLAINTIFF

v.

MARION BLAKEY

Administrator
Federal Aviation Administration
800 Independence Avenue, SW
Washington, DC 20591

DEFENDANT

CASE NUMBER 1:03CV00173

JUDGE: Ricardo M. Urbina

DECK TYPE: FOIA/Privacy Act

DATE STAMP: 02/03/2003

FREEDOM OF INFORMATION ACT COMPLAINT

Plaintiff, Brent Taylor, as and for his complaint against Marion Blakey, Administrator,
Federal Aviation Administration (herein after "FAA"), state as follows:

1. This is an action pursuant to the Freedom of Information Act, 5 USC § 552 et seq ("FOIA") as amended, demanding the FAA to produce certain records within its possession and control pertaining to a 1935 vintage airplane.
2. The plaintiff, Brent Taylor, is an individual who is a citizen and resident of the State of Iowa and is a citizen of the United States of America. He is the president

of the Antique Airplane Association, dedicated to the preservation of vintage aircraft and aviation heritage.

3. The FAA is a Federal agency of the United States established by statute.
4. This Court has jurisdiction over this dispute pursuant to 28 USC § 131, Federal question, and 5 USC § 552, et seq the Freedom of Information Act ("FOIA").
5. Venue in this Court is proper pursuant to 5 USC § 552 (a)(4)(13) which directs a complainant to file an action in, among other permitted places, the District of Columbia.
6. On August 22, 2002, the plaintiff sent a letter, pursuant to FOIA, to the FAA requesting copies of the entire file pertaining to the type certificate of an aircraft known as the Fairchild F 45 (Type certificate No. 603 issued in the mid 1930s). This file should include applications for the type certificate, transfers of the ownership of the type certificate, any waivers of any trade secret status that may be contained in that file, and any correspondence, letters, or notations of any kind withdrawing, rescinding, or modifying any waiver of trade secret status. The plaintiff also requested plans, blueprints, specifications, engineering drawings and data submitted in support of the Type Certificate for the Fairchild F 45 (Type certificate 603). The letter is enclosed as Exhibit A.
7. To date, the FAA has not responded to the request in Exhibit A.

8. On November 25, 2002, the plaintiff appealed the non-response to the FAA, attached as Exhibit B.
9. To date, the FAA has not responded to the Exhibit B appeal and therefore, pursuant to Department of Transportation Regulations, 49 CFR part 7, which implements the FOIA, the plaintiff has exhausted his administrative remedies.
10. The FAA is the custodian of copies of drawings and other data submitted in 1935 by Fairchild Engine and Airplane Corporation, manufacturer of an aircraft known as a Fairchild F 45 in order to support an application for an Approved Type Certificate prior to production of the proposed aircraft for sale to the public.
11. The Fairchild Engine and Airplane Corporation, no longer in existence, was awarded Approved Type Certificate No. 603 on April 29, 1936 by the Civil Aeronautic Authority, the predecessor to the FAA.
12. The FAA maintains records in which are kept aircraft type certificates, transfers of type certificates, and directions and approvals from the type certificate holders to release drawings and other information to the public, and maintains such a record file pertaining to this subject aircraft.
13. In 1955, the owner of the subject type certificate and supporting drawings and data released these documents to the public and thereafter this material lost any

trade secret status it may have had. A true copy of this release is attached as Exhibit C.

14. The manufacturer of the F 45 aircraft ceased production in 1939 and the aircraft was never produced since.
15. The United States Court of Appeals for the Tenth Circuit, in the case of Greg Herrick v. Jane Garvey, Administrator, Federal Aviation Administration 298 F.3d 1184 held that because of the subject release (Exhibit C) "those documents are no longer 'secret' for the purposes of Exemption 4 [of the FOIA]." and that "[i]n such a situation, FOIA creates an obligation for the government to release the documents." 298 F.3d at 1193, 1194.
16. The United States Court of Appeals for the Tenth Circuit nevertheless denied access to Greg Herrick on the grounds that he failed to challenge a proposition that this releasable public information can possibly be remade into a secret. 298 F.3d at 1194, fn 10.
17. A secret, by definition, cannot be made from information that has been in the public domain since 1955.
18. The FAA file pertaining to the subject type certificate and supporting data contains no withdrawal, retraction or modification of the 1955 release of the subject material to the public.

19. The transfer of ownership of an aircraft type certificate is a regulated event pursuant to 14 CFR 21.47.
20. The FAA file for the subject type certificate and supporting data contains no transfer of ownership in compliance with 14 CFR 21.47 to any presently existing person or entity.
21. In order for material to be a trade secret it must be shown that the claimed owner has continually guarded it as a trade secret.
22. Notwithstanding the fact that the subject material concerning the F 45 aircraft ceased being a trade secret since its release to the public in 1955, no person or entity has taken necessary steps to regain and guard the secrecy by at least either a transferring of ownership pursuant to 14 CFR 21.47 and/or submitting to the subject FAA type certificate file a withdrawal, rescission or modification of the 1955 release.
23. The FAA has no basis under the FOIA for withholding the right of access to the subject documents.
24. The failure of the FAA to release the subject documents constitutes a violation of the FOIA.

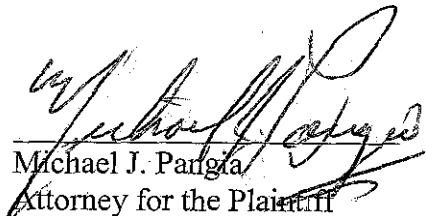
25. The plaintiff has incurred personal expense in filing his FOIA request, appeal and this action against the FAA, including attorneys fees.

26. Subsection (a)(4)(E) of the FOIA permits the prevailing party to recover attorneys fees.

WHEREFORE plaintiff Brent Taylor, requests the Court to:

1. Order the FAA to produce the requested documents pertaining to the 1935 Fairchild F 45 aircraft.
2. Allow the plaintiff to recover attorney's fees and expenses associated with this action.
3. Grant such other and further relief as this Court may deem just and proper.

Respectfully submitted,



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